



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200941037

JUL 13 2009

UIL No. 408.03-00

SE:T:EP:RA:T4

Legend:

Individual A =

Individual B =

Individual C =

Trust D =

State E =

Bank O =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Amount A =

IRA X =

Account F =

Account G =

Account H =

Dear:

This is in response to a request dated May 20, 2008, supplemented by correspondence dated September 15, 2008, September 18, 2008, September 24, 2008, September 25, 2008, October 1, 2008, October 8, 2008, January 9, 2009 and June 1, 2009, submitted on behalf of Individual A by his authorized representative, in which a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code") was requested.

Under penalty of perjury, the following facts and representations in support of the ruling request have been submitted.

Individual A, now deceased, received a distribution of Amount A from IRA X. It is asserted that the failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the medical condition, treatment, and hospitalization during the 60-day period of Individual B, who was Individual A's duly appointed representative, which impaired the ability of Individual B to accomplish the rollover on behalf of Individual A.

Individual A, a resident of State E, whose date of birth was Date 1, owned IRA X. On Date 2, Individual B, acting under a Durable Power of Attorney on behalf of Individual A, withdrew Amount A from IRA X with the intention of rolling over Amount A into an IRA Money Market Account at Bank D. A few days later, on Date 3, Individual B underwent a biopsy and was diagnosed with a medical condition. A few days later, on Date 4, Individual B went to Bank D and set up Account F, a non-IRA Money Market Account, and Accounts G and H, non-IRA Certificates of Deposit (CDs) in the name of Trust D. Individual B divided Amount A into three parts and deposited one part in each of Account F, Account G and Account H. A month after the distribution of Amount A, on Date 5, Individual B was hospitalized for a different medical condition and underwent surgery a few days later. She was discharged on Date 6, but was confined to bed rest and a chair following discharge from the hospital. It is asserted that as a result of the medical conditions and treatments prior to Date 4, Individual B inadvertently placed Amount A in non-IRA investments. In addition, it is represented that as a result of Individual B's subsequent hospitalization and treatment, she did not have an opportunity to discover and correct her mistake within the 60-day period following the distribution of Amount A. Individual B passed away on Date 7, a few weeks after the end of the 60-day period.

Subsequent to requesting this private letter ruling, Individual A passed away on Date 8. The estate of Individual A now seeks the waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Code, with respect to the distribution of Amount A from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including

casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

We do not believe that the information and documentation submitted supports the assertion that the failure to accomplish a timely rollover of the distribution of Amount A was due to the medical condition, treatment and hospitalization of Individual B during the 60-day rollover period. Individual B established three non-IRA accounts in the name of Trust D and not in the name of Individual A. Further, Individual B consciously divided Amount A into 3 parts and deposited one part in each account. There is no documentation that Individual B's medical condition prior to, and on Date 4, adversely impacted her ability to accomplish the rollover when she went to Bank O on Date 4.

Therefore, pursuant to section 408(d)(3) of the Code, the Internal Revenue Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***, 1.D. No. ***, at ()
***. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Donzell H. Littlejohn

Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

Cc: